



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201145028

Uniform Issue List: 402.00-00

AUG 18 2011

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SE: T. EP. RA: T2

Legend:

| | |
|----------------------------|-----|
| Taxpayer A | ### |
| Amount 1 | ### |
| Amount 2 | ### |
| Plan X | ### |
| Financial Institution A | ### |
| Financial Institution B | ### |
| Financial Institution C | ### |
| Account 1 | ### |
| Account 2 | ### |
| IRA X | ### |
| Date 1 | ### |
| Date 2 | ### |

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Dear ###:

This letter is in response to your request dated November 3, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code"). Your request was supplemented with correspondence dated December 16, 2010, December 23, 2010, February 8, 2011, February 15, 2011, February 16, 2011, February 17, 2011, and March 9, 2011.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, 51 years old, represents that on Date 1, she received a distribution of Amount 1 from Plan X, maintained at Financial Institution A, and that she intended to rollover a portion of it, Amount 2, into IRA X at Financial Institution C. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to a debilitating medical condition that prevented her from making financial decisions. Taxpayer A asserts that Amount 2 has not been used for any purpose.

Taxpayer A represents that she was a participant in Plan X, a 401(k) plan maintained at Financial Institution A. Taxpayer A asserts that on Date 1, she took a distribution of Amount 1 from Plan X, which Financial Institution A deposited into Account 1, a non-retirement plan account at Financial Institution B. Taxpayer A represents that she used a portion of Amount 1 to pay for her daughter's college tuition and intended to roll over the remainder, Amount 2, into IRA X at Financial Institution C. On Date 1, Taxpayer A transferred Amount 2 into Account 2, another non-retirement plan account at Financial Institution B.

Prior to Date 1, Taxpayer A was in treatment for a serious mental health condition. According to her treating physician, Taxpayer A was not in a position to make financial decisions on Date 1 and throughout the 60-day rollover period. During the rollover period, Taxpayer A's mental condition worsened. She continued to seek treatment for her debilitating mental condition throughout the rollover period and on several occasions after the rollover period had ended. On Date 2, a few weeks after the end of the 60-day rollover period, Taxpayer A attempted to rollover Amount 2 into IRA X at Financial Institution C, but an employee at Financial Institution C informed her that she had missed her 60-day window.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount 2.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property

other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 402(c)(8)(B) of the Code provides that an individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(5) of the Code provides that a transfer to an IRA from an eligible plan shall be treated as a rollover contribution described in section 408(d)(3) of the Code.

Revenue Procedure 2003-16, 2003-14 I.R.B. 359, (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 402(c)(3) and 408(d)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of a payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and submitted by Taxpayer A is consistent with the assertion that her inability to complete a timely rollover was due to her severe mental illness which rendered her unable to make financial decisions. Specifically, Taxpayer A submitted documentation from her treating psychiatrist that in his opinion, Taxpayer A "was incapable of taking care of her personal health and financial affairs due to her mental illness" during the 60-day rollover period.

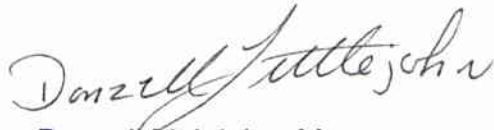
Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 2 into a Rollover IRA or another qualified plan. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2 will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, contact ### ### at (###) ###-####.
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

A handwritten signature in cursive script that reads "Donzell Littlejohn".

Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose